

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37189

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 660
	)	
Plaintiff-Respondent,	)	Filed: October 5, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JAMES DAVID BURKE,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Charles W. Hosack, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge; GRATTON, Judge;  
and MELANSON, Judge

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PER CURIAM

James David Burke pled guilty to statutory rape. I.C. § 18-6101(1). The district court sentenced Burke to a unified term of ten years, with a minimum period of confinement of two and a half years, to run concurrent with an unrelated sentence. Burke's judgment of conviction was entered on February 29, 2008. On August 27, 2008, Burke filed a pro se I.C.R. 35 motion for reduction of his sentence. The district court denied Burke's Rule 35 motion on the basis that it did not have jurisdiction because Burke's motion was untimely. Burke appeals, alleging the district court erred in denying his Rule 35 motion.

The failure to timely file a request for leniency under Rule 35 within 120 days of the filing of the judgment of conviction deprives the district court of jurisdiction to grant such relief.

*State v. Starry*, 130 Idaho 834, 835, 948 P.2d 1133, 1134 (Ct. App. 1997); *State v. Sutton*, 113 Idaho 832, 833, 748 P.2d 416, 417 (Ct. App. 1987). Burke's request for leniency was not filed within the required 120 days after the filing of his judgment of conviction. Consequently, the district court was without jurisdiction to consider Burke's request for leniency and did not err in denying the motion. Therefore, the district court's order denying Burke's Rule 35 motion is affirmed.